

**REMARKS**

Claims 4 and 9 -18 are pending. Claim 16 is allowed. Claims 14 and 15 have been withdrawn from consideration. Reconsideration and allowance based on the comments below are respectfully requested.

**Claim 4**

The Office Action rejects 4, 9 and 10-13 under 35 U.S.C. § 103(a) as being unpatentable over Ejima et al. (US 2002/0027602), Habuto et al. (USP 6,810,441) and Yamaoka (USP 5,130,812). This rejection is respectfully traversed.

Claim 4 recites, *inter alia*, “ wherein deletion of candidate deletion object is performed in an image capturing sequence upon executing image capturing instructions when the operator presses a shutter button during the picture taking operation.” Applicant respectfully submits this feature is not taught by the combination of Ejima, Habuto and Yamaoka.

The Office Action agrees that Ejima and Habuto fail to teach the above noted feature in claim 4. Yamaoka is provided to teach the feature absent of Ejima and Habuto.

Applicant respectfully submit that Yamaoka does not teach the above noted feature. Yamaoka teaches an apparatus for recording a still image and also an audio signal on a disc. In Yamaoka’s apparatus, the audio recording operations and image capturing operations can be performed separately. The Office Action relies upon column 19, lines 29-41 to teach the above claimed

features. Applicant respectfully submit that this section of Yamaoka's specification teaches methods being performed during audio recording operation only. Columns 19, 21-42 are reproduced below;

It is expected that, during some audio recording operations, the user may not be satisfied with the method she is recording. For example, he may become flustered, or his message may be too long (e.g. more than 9.6 seconds) but he may not be able to compose his thoughts satisfactorily. In any event, the present recording operation with which he is not satisfied maybe overridden by operating recording which switch 12 or by partially depressing shutter release button 18. As discussed above, when the recording switch or shutter release button is operated, a new audio recording operation is initiated and any time compressed audio signal which may have been recorded but with which the user is not satisfied is erased from disc 41.

It is evident from the above, that the Examiner is relying upon a portion of Yamaoka which only refers to an audio recording operation. Essentially, during an audio recording operation the user can override a previously recorded audio signal by partially depressing the shutter release button 18. Applicants respectfully submit the partial pressing of the shutter release button is not being performed during the image capturing operation. Further, Yamaoka only teaches a partial pressing of the shutter release button and not a full pressing of the shutter button.

Applicant notes that at column 19, lines 43-63 discusses what happens when a user is recording an audio signal and then is presented with a photographic opportunity. When this occurs, see lines 44-46 of column 19, the shutter release button 18 is operated to record the still video picture signal.

The shutter release button is not operated during the image capturing process to perform deletion of a candidate deletion object as alleged by the Examiner.

Therefore, Yamaoka fails to teach the above noted feature of claim 4.

Therefore, the combination of Ejima, Habuto and Yamaoka fail to teach each and every feature of independent claim 4 as required. Dependent claims 9-15 are also distinguish from the combination for the above reasons as well as for the additional features they recite. Accordingly, withdrawal of the above noted rejection is respectfully requested.

#### **Claim 17**

The Office Action rejects claims 17 and 18 of 35 U.S.C. § 103(a) as being unpatentable over Habuto et al. (USP 6,810,441) in view of Niwa (USP 6,538,692). This rejection is respectfully traverse.

Claim 17 refers to a video and audio device which include the control device. The control device controls the storing of captured image data in the memory card. If the memory card does not have enough capacity to hold the estimated amount of image data, the captured image data is stored in the eternal memory of the image capturing device. If audio data is found to be stored in the memory card, a selected audio data is then deleted from the memory card and the captured image data is transferred from the internal memory to the memory card upon deletion of the audio data. However, if audio

data is not stored in the memory card, the image capturing operation is voided or inhibited and the image data is not stored at all.

Niwa teaches an image recording system for a camera in which a captured image is stored in an internal memory of the camera and if memory space is unavailable, in an external recording medium. The external recording medium can then be exchanged for a new one and the data is then transferred from the internal memory to the new external recording medium. Thus, Niwa merely teaches the ability to record data in an internal memory when the external memory is full.

Habuto teaches a system which provides a message to a user that the memory is full in an attempt to capture an image when there is insufficient memory to store the captured image. When receiving this message, it is up to a user to disengage from the image capturing operation and initiate an erasing procedure to remove data from the memory. The user must enter the menu screen and perform functions for accessing the memory and deleting the files. It is only after performing this time consuming procedure that the user can then commence with an image capturing operation. See column 12, lines 9 through column 13, line 20.

Habuto teaches notification of memory being full to a user and the user performing the task of deleting files if he deems it necessary and only being able to commence the image capturing when he has deleted such data.

Habuto system is not limited to certain files, i.e. audio or image. Habuto teaches deletion of data within the memory by a user intervention. This means that the user can select any type of file to delete. In contrast, Niwa teaches the storing of data in an internal memory allowing for a replacement of the memory card. Niwa does not teach or suggest a deletion of any type of data.

Applicant respectfully submit that the combination of Habuto and Niwa at best lead one of ordinary skill to store data in an internal memory or erase data manually by a user to obtain more memory space or alternatively to replace an external memory card. Nothing in this combination teaches or suggest erasing of data being determined by a control device and being contingent upon whether the data is an audio file or not an audio file. Niwa doesn't teach any type of erasing of data and Habuto teaches erasing of user selected data. There is not contingency of erasing only audio data if present to make room for image data by a controlled device during an image capturing operation. Further, there is no teaching by Niwa of allowing the image capturing operation to proceed if not audio data is present. In Niwa, the image capturing operation is proceeded no matter what. If the image data is greater than the memory, the image is stored in the internal memory an image capturing operation proceeds. In Habuto, the user must select and delete data and then recommence the image capturing operation. The erasing of this image is not performed by a control device and further if no audio data is present the user can select image data to delete and still continue the image

capturing operation. The continuation of the image capturing operation in Habuto and Niwa is not contingent upon whether audio data is present within the memory.

Therefore, Applicant respectfully submit that the combination of Niwa and Habuto fail to teach each and every feature of Applicant's independent claim 17. Claim 18 is also distinguished from the cited reference for the above reasons as well as the additional features it recites. Accordingly, reconsideration withdrawal of the above noted rejections with regards to claims 17 and 18 are respectfully requested.

### **Request Interview**

It is apparent that Applicant strongly disagrees with the Examiner's interpretation of the claim language and the Examiner's interpretation of the teachings within the references. Therefore, Applicant respectfully request Examiner contact the Applicant's representative Chad J. Billings at 703-205-8001 in order to schedule an interview prior to the issue of the next Office Action, should the rejections not be withdrawn.


**Conclusion**

For the reasons above, Applicant respectfully submits that claims 4 and 9-17 are distinguishable over the combination of references. Favorable consideration and prompt allowance are earnestly solicited.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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